IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 1671 of 2005

IN

WRIT PETITION NO. 722 OF 20002

State of Maharashtra & ors. .. Applicants

versus

Anil R. Atugade & ors. .. Respondents

...

Mr.C.R. Sonawane, AGP for the applicants.

Mr.M.S. Topkar for the respondents

CORAM : B.H. MARLLAPALLE,J

DATED : 18th August 2005.

P.C.:

1. Heard Mr.Sonawane, the Learned AGP for the applicants who are the respondents in Writ Petition no.722 of 2002 and Mr.Topkar, learned counsel for the respondent no.1 who is the petitioner in the said petition. Respondent no.2 is a formal party and

therefore, shall stand deleted forthwith. Rule was granted in this application by the order dated 8th July 2005 and consequently affidavit in reply has been filed by the respondent employee opposing this application.

2. The respondent came to be appointed as a "Khansama" (cook) initially by an order dated 3rd July 1990 issued by the Executive Engineer, Kanher and Dhom Hydroelectric Division, Vennenagar for a period of six months. This appointment was continued for another period of six months vide office order no. 19 of 1991 and thereafter by an order dated 30th July 1991, further extension of 15 days was given. It appears that the respondent continued to work even after the period of temporary employment was over and finally on 14th June 1991, he was issued a notice of termination/retrenchment by following the provisions of section 25F of the Industrial Disputes Act. He approached the Labour Court in complaint (ULP) no. 31 of 1994 and challenged the order of retrenchment, and the complaint was allowed by holding that the retrenchment was invalid. This decision of the Labour Court dated 4th June 2001 came to be challenged by the present applicants in Revision

Application (ULP) No.15 of 2001 and the learned Member of the Industrial Court at Satara was pleased to allow the said revision vide his judgement and order dated 11th December 2001. The judgement and order of the Labour Court came to be quashed and set aside and consequently Complaint (ULP) no. 31 of 1994 came to be dismissed. This decision of the Industrial Court has been challenged by the present respondent employee in Writ Petition no.722 of 2002. While granting rule, interim relief in terms of prayer clause (b) was granted by this Court ex-parte so far as the present applicants are concerned and therefore, this application for vacating the said order of ex-parte interim relief.

3. In addition to the averments supporting the decision of the Industrial Court, the applicants have stated that the respondent was not appointed on any regular post and the guest house for which the respondent was employed came to be closed down on completion of the project executed by Bharat Heavy Electricals Limited and under such circumstances, the ex-parte interim order passed by this Court cannot be implemented.

4. The learned Judge of the Labour Court held the order of termination invalid on the grounds that retrenchment compensation was not paid and seniority list was not published. So far as the payment of retrenchment compensation is concerned, the retrenchment notice itself had offered the said compensation but the learned Judge of the Labour Court held that the respondent employee was entitled for the benefits of the Kalelkar Award and therefore, the retrenchment compensation amount was required to be calculated on the basis of the salary payable under the said award. Prima facie, this reasoning appears to be erroneous as the respondent employee had not put in a service of five years and admittedly he was continued for four years only. Secondly, failure to display the seniority list of casual workers for the concerned division itself would not be fatal to the order of retrenchment unless by adducing evidence before the Labour Court it was demonstrated that juniors were retained in service. The Industrial Court appears to have considered all these issues and reversed the order of the Labour Court and the correctness of the view taken by the Industrial Court is under consideration in the pending Writ Petition. However, prima facie,there is

no case for granting interim relief in terms of prayer clause (b), during the pendency of the said Writ Petition.

5. In the facts and circumstances of this case, Civil Application is therefore allowed and the ex-parte interim relief order dated 5th February 2002 is hereby vacated. Liberty to the parties to apply for early hearing of Writ Petition no. 722 of 2002. It further made clear that in case the Executive Engineer concerned has any vacancy of a cook on casual/temporary basis during the pendency of this petition, the respondent workman will be offered such a post without prejudice to his claim in the petition.

B.H. MARLAPALLE, J